the taxes and purchased by the commonwealth, and subsequently it might have passed under proceedings identical with those that took place in this case under a deed from the clerk, under the act of 1896, and in that case the purchasers, the defendants in error here, would have taken such title as was in the Grottoes Company at the beginning of the year 1891, although since that time its title had passed to and vested in H. M. Bell, and the language of the statute would have been satisfied and no wrong or injustice done to any one, because it would have been the duty of Bell, when he purchased from the Grottoes Company, to have satisfied himself that the taxes had been paid up to the time of his purchase.

Without undertaking to generalize, therefore, upon the subject, but confining ourselves to the facts of the case in judgment, we are of opinion that the title which was vested in Bell by virtue of his deed from the Grottoes Company did not pass to the commonwealth under its purchase at the tax sale in 1895, and, therefore, is not now vested in the appellees by virtue of the deed from the clerk of the circuit court of Rockingham county.

We are therefore of opinion that the decree of the circuit court must be reversed, and this court will enter a decree in accordance with the views expressed herein.

Reversed.

SUTHERLAND *et al. v.* PEOPLE'S BANK, INC.

Nov. 17, 1910.

[69 S. E. 341.]

1. Process (§ 141*)—Service—Return—Conclusiveness.—A sheriff's return of service of process is conclusive between the parties unless a false return is procured by plaintiff or results from the mistake of the officer.

[Ed. Note.—For other cases, see Process, Cent. Dig. §§ 189-192; Dec. Dig. § 141.*]

2. Abatement and Revival (§ 30*)—Defects in Return of Process—False Return.—A false return to process is not ground for abatement in the absence of a showing that the return was procured by the act of the adverse party.

[Ed. Note.—For other cases, see Abatement and Revival, Cent. Dig. § 166; Dec. Dig. § 30.*]

3. Appeal and Error (§ 1040*)—Harmless Error—Rulings on Pleadings.—Where the court adjudges that a plea presents no defense and

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

sustains a demurrer thereto, the error in entertaining a demurrer which may be treated as a motion to strike is harmless.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4093; Dec. Dig. § 1040.*]

4. Parties (§ 51*)—Bringing in New Parties.—Indorsees on a note may, when sued thereon, require that the maker be brought before the court.

[Ed. Note.—For other cases, see Parties, Cent. Dig. §§ 77-82; Dec. Dig. § 51.*]

5. Appeal and Error (§ 1036*)—Harmless Error—Parties.—Where, in an action on a note brought against the maker and indorsers, the maker who was not personally served wrote a letter to the commissioner appointed to take and state an account of liens against the real estate of defendants, in which he set out the real estate belonging to him, there was evidence that the maker had notice of the suit and its object and opportunity to make a defense, and he was bound by its results, and the rule that the indorsers could require that the maker be brought before the court was satisfied.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4069-4074; Dec. Dig. § 1036.*]

Appeal from Circuit Court, Dickenson County.

Suit by the People's Bank, Inc., against J. E. L. Sutherland and others. From a decree for plaintiff, defendants appeal. Affirmed.

KEITH, P. The People's Bank filed its bill in the circuit court of Dickenson county to enforce the lien of a judgment against J. E. L. Sutherland, Newton Sutherland, S. F. Sutherland, and S. J. T. Powers upon a note in which J. E. L. Sutherland was the maker and the others indorsers in the order named. Process was regularly served upon all of the defendants in person, except J. E. L. Sutherland, and as to him the sheriff's return states that on the 13th day of February, 1909, he executed "by leaving a copy of the within summons posted at the front door of his usual place of abode in Dickenson county, Va., he, the said J. E. L. Sutherland, not being found at his usual place of abode, and neither his wife nor any member of his family over 16 years of age being found at his usual place of abode on whom service of process could be had."

J. E. L. Sutherland has filed neither plea nor answer in the case, but his codefendants pleaded that the judgment to enforce which the bill was filed was obtained upon a negotiable note executed by J. E. L. Sutherland and indorsed by the other defendants in

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

the order named, and that, if paid by any one of the indorsers, such indorser so paying it would be entitled to subrogation against the prior indorsers and against the maker of the note; that the said J. E. L. Sutherland has never been summoned as required by law to answer the bill; and that the return by the sheriff upon the process against the said J. E. L. Sutherland is false, because the said Sutherland has had no usual place of abode in said county at any time since the institution of this suit, all of which the defendants were ready to verify. "Wherefore, for as much as the said J. E. L. Sutherland is not yet before this court with these defendants so that satisfaction can be paid out of his property first, or complete justice be done all the parties defendant to said bill, these defendants pray judgment whether this court can or will take any further cognizance of the cause aforesaid, and pray judgment of the said writ and return thereon, and that the same be quashed. * * *

To this plea in abatement, which it is proper to say was filed within the time prescribed by law, the plaintiff demurred, and contends that the sheriff's return as to all it contains is conclusive, and cannot be contradicted by evidence aliunde; that, even if the return of the sheriff could be impeached on the ground of fraud, there is no allegation in the plea that plaintiff colluded with the sheriff and procured him to make a false or fraudulent return; and that the plea is not properly verified.

The court sustained the demurrer, dismissed the plea, and referred the matter to a commissioner to take and state an account of liens against the real estate of defendants, and also to ascertain and report what real estate is owned by the defendants liable to said liens. At a later day the commissioner filed his report, ascertaining the liens binding upon the real estate in the bill mentioned, which consist of the judgment set out in the bill, amounting principal and interest to $1,532.20, and a judgment against J. E. L. Sutherland, S. F. Sutherland, Newton Sutherland, and C. M. Hayer for $166 50. With his report he returned a letter directed to him as special commissioner, as follows:

"Tiny, Va., Aug. 13, 1909.

"Mr. R. W. Wright, S. P. Clintwood, Va.

"Dear Sir: As requested I hand you herewith a statement of the real estate I own.

"One tract containing one hundred and ninety-seven acres (197 A), located on Big and Little Yellow Lick branches of Frying Pan creek. One house and lot of one acre and eight poles (1 A. 8 P.) on Frying Pan creek near the sulphur spring schoolhouse and church houses. One tract of one hundred and thirty acres (130 A.) located on Priest's fork of Frying Pan creek. The last-named tract I have as yet not had the deed recorded and

I am inclosing my deed under this cover to you. You may either keep the deed or hand it to the clerk and I will have same recorded as soon as I come over.

"For further description of the 197-acre tract you can find it on record in my name. As to the 1 acre and 8 poles tract you can find my deed for same in the papers in the case of May Sutherland against J. H. T. Sutherland.

"Any further information regarding same I will gladly give it at your request.

"Very truly yours,

"J. E. L. Sutherland."

Referring to this letter of August 13th, the commissioner in his report dated October 11, 1909, says: "Your commissioner would report that he finds nothing of record showing that J. E. L. Sutherland owns any real estate in Dickinson county except the 197-acre tract, but he sent your commissioner a list of the real estate he did own, which is hereto attached and made a part of this report."

To this report exceptions were filed: (1) Because J. E. L. Sutherland has never been brought before the court, and until that is done the necessary parties cannot be heard; (2) that he had no notice of the making of the report; (3) that it does not show that there were no delinquent taxes, as required by law; (4) that it does not show what lands are primarily liable to the payment of these debts; (5) that it does not show that the second lien is one on which J. E. L. Sutherland is liable primarily; (6) that it does not show that the lands in five years will not satisfy the debts by rents and profits; and there are other exceptions which we do not deem it necessary to mention.

Upon this report, the court entered a decree sustaining the exception with respect to the failure of the report to show that there were no delinquent taxes, and overruling all others. The cause was sent back to the special commissioner, who was required to make a supplemental report showing whether or not there were any taxes due the state or county which constituted a lien. In obedience to this decree the commissioner returned a report, in which he says that after having given the parties interested notice of the time and place of sitting, as required by the decree, he proceeded to ascertain and report on the matters and things referred to him by said decree, and he ascertains and reports that there are no delinquent taxes against any of the real estate owned by any of the defendants.

This report was again excepted to upon the ground that J. E. L. Sutherland had no notice with respect to it, and that he had never been properly brought before the court.

In November, 1909, the cause came on again to be heard

upon the supplementary report of the special commissioner and the exceptions thereto, and the court entered a decree overruling the exceptions and appointing a commissioner, who was directed in the proper manner to sell to the highest bidder the land belonging to J. E. L. Sutherland, which is the land described in the letter of Sutherland to the commissioner, copied into the report and referred to in this opinion. From this decree Newton Sutherland, S. F. Sutherland and S. J. T. Powers obtained an appeal.

It is objected to that decree that the report of the commissioner does not ascertain that the land directed to be sold would not rent for enough to pay the debt within five years.

The bill avers that all the land mentioned in the bill will not rent for enough within five years to satisfy the judgment therein set out. Appellants state in their answer that J. E. L. Sutherland, the principal debtor, has real estate of record sufficient to pay the judgment. They then set out the several parcels of land owned by J. E. L. Sutherland (which are the identical parcels decreed to be sold in the decree appealed from), and pray "that the real estate of the said J. E. L. Sutherland be first sold to satisfy complainant's debt, which will more than pay the same. But should the real estate of the said J. E. L. Sutherland, the principal in said debt of complainant, not sell for enough to pay the same, then they have nothing to say why their land should not be sold to pay their proportional share of the remainder. Respondents do not deny that complainant's judgment is a lien on the real estate of all of the defendants, but they thereby deny each and every allegation of complainant's bill that has not been heretofore confessed or denied."

The principal contention in this case arises upon the return of the sheriff on the process issued against J. E. L. Sutherland.

In Preston *v.* Kindrick, 94 Va. 760, 27 S. E. 588, 64 Am. St. Rep. 777, the question involved was as to the right of a party to go into a court of equity to obtain relief against a decree rendered in a cause to which he was made a party, on the ground that no process was served upon him, when the process appeared to have been executed by the return of the sheriff, and by the recital in the decree of the court taking the bill for confessed. Judge Buchanan, in that case, speaking for the court, said: "The decisions of the courts upon this question are conflicting, and the reasoning of the judges is not entirely satisfactory on either side. One line of cases holds that a party who had been injured by a judgment rendered in his absence may have relief in equity if he can succeed in showing that he was not summoned, and did not hear of the pro-

ceedings in time to make defense or to obtain a new trial, and that he was in meritorious defense,"—citing Freeman on Judgments, § 495. "Another class of cases holds that a court of equity cannot grant relief in such a case unless the false return of service was procured or induced by the plaintiff, or he can in some way be connected with the deception; thus likening the case to those cases in which the defendant has been prevented from setting up his defense by the trickery or fraud of his adversary. The rule of this latter class of cases is perhaps the better doctrine. The risk of opening a judgment or decree on an allegation which, like that of the failure to serve process, or the want of notice, depends upon the uncertain testimony of witnesses, is so great that the injured party should be left to his remedy in the same case where relief can be had in that case, or to his remedy against the officer who has made the false return, unless that return was in some way procured or induced by the plaintiff, or he is in some way responsible for the defendant's want of notice of the suit, or of the pleadings therein." And this decision was followed in Ramsburg *v.* Kline, 96 Va. 465, 31 S. E. 608, where it was held that "the return of an officer showing that a summons to commence a suit has been duly executed cannot be contradicted by a defendant, unless it can be shown that the plaintiff procured or induced the return, or was in some way connected with the deception. It is immaterial whether the objection to the return be made at law or in equity; the rule is the same."

4 Min. Inst. pt. 1, p. 1042, states the law as follows: "The better opinion is believed to be that the officer's return upon process, although it be false, is still conclusive, in the suit, the remedy for the party aggrieved by the false return being an action for damages against the officer and his sureties. (It is no doubt a hardship upon one against whom a judgment is rendered upon such false return, he having had no knowledge of the pendency of the suit, and no opportunity to defend himself; but, on the other hand, it would occasion delays and hindrances in the administration of justice, which would work still greater mischiefs, if it were allowed to impeach the returns of sworn officers and so annul the proceedings founded thereon.)"

The question has been considered and decided in the following cases from the Supreme Court of West Virginia, a state whose statutes upon the subject are similar to, if not identical with our own: Rader *v.* Adamson, 37 W. Va. 582, 16 S. E. 808; McClung *v.* McWhorter, 47 W. Va. 150, 34 S. E. 740, 81 Am. St. Rep. 785; Talbott *v.* Southern Oil Co., 60 W. Va.

423, 55 S. E. 1009, where it is said that "if a return of service of a summons commencing a suit is sufficient on its face, such facts stated therein as it was the duty of the officer to set forth in it cannot be put in issue by either a plea in abatement or a motion to set aside a judgment by default. For reasons of public policy, contradiction of such returns is not permitted in any form, except upon allegations of fraud or collusion."

In 32 Cyc. p. 514, the law is thus stated: "The question of the conclusiveness of the return is one upon which there is an utterly irreconcilable conflict in authority. The English common-law rule, which is also the rule in many American states, is that, as between parties and privies, the return of an officer is to be taken as true, as to all matters which are properly the subject to a return by the officer, and it can be controverted only in an action against the officer for a false return, unless it is contradicted by other matters appearing of record in the case, or unless the false return was procured or induced by plaintiff, or resulted from the mistake of the officer, except where the return forms the basis for a foreign judgment, in which case it is prima facie evidence only."

In Tillman *v.* Davis, 28 Ga. 494, reported also in 73 Am. Dec. 786, the syllabus states that "the sheriff's return of service on writ cannot be traversed by parties or privies, except for fraud or collusion;" and in the course of the opinion Judge Lumpkin says: "I have investigated carefully and traced the question to its fountainhead, and find it well settled that by the common law no averment will lie against the sheriff's return, and one reason assigned amongst others is that he is a sworn officer to whom the law gives credit."

It is conceded by appellants that such is the law where, as in Preston *v.* Kindrick, supra, a bill was filed asking for relief against a decree by default, or, as in Ramsburg *v.* Kline, supra, where the relief was asked against a judgment by default; but it is earnestly contended that the law is otherwise where the attack is made upon the return of a sheriff in a pending suit by proper plea in abatement.

The cases which we have cited make no such distinction, and the reasons of public policy upon which they rest seem to apply equally to both classes of cases.

It is objected, however, that the court should not have entertained a demurrer to the plea in equity—which is true—but if, beneath the form in which the objection to the plea is presented, it appears that the conclusion reached was proper (that the plea presented no defense of which the law could take cognizance), the objection by demurrer may be treated as a

motion to strike out the plea, and the ruling of the circuit court be regarded as harmless error.

Even though we were of opinion that the defendants had right to traverse the sheriff's return, we should be indisposed in this case to reverse the decree. We concede that the appellants, being liable as indorsers, had the right to require that the principal debtor should be brought before the court. It appears in the facts stated that in reply to inquiry by the special commissioner, J. E. L. Sutherland, wrote him a letter in which he set out the real estate belonging to him. That letter is made a part of the commissioner's report, and is the basis of the court's decree. From that letter it appears that he had ample notice of the suit and its object, and every opportunity to make defense. That letter shows an active participation in the litigation, and is of itself sufficient to bind him by its results.

The decree of the court is in accordance with the answer filed by the appellants, and the court did just what in their answer they declared they wished the court to do. It directed a sale of the lands of the principal debtor to satisfy a judgment upon which they concede themselves to be liable, and J. E. L. Sutherland is making no objection to that decree.

Upon the whole case we are of opinion that there is no error to the prejudice of appellants, and the decree of the circuit court is affirmed.

Affirmed.

Note.

It is seldom that we have been so deeply impressed with the injustice of a decision as with this one in the principal case. The trend of modern decisions is all the other way, and we do not think it would stand against an objection that it amounts to a denial of due process of law.

It was decided by the supreme court of the United States in the well-known case of Earle *v.* McVeigh, 91 U. S. 503, which was appealed from the eastern district of Virginia, and construed this Virginia statute, that such a service of process as was upheld in the principal case, was not only voidable but absolutely void and of no effect, and therefore subject to collateral attack.

Earle *v.* McVeigh is substantially similar to the principal case in all respects; the return of the sheriff was in the same words; the action was to recover on promissory notes; and the allegation was that the return was false and fraudulent as in the principal case. In Earle *v.* McVeigh the "usual place of abode" had been vacated seven months before the posting of the notice, whilst in the principal case the defendant had had no "usual place of abode" in the county since the institution of the suit.

It is elementary that substituted service in actions purely in personam being a departure from the common-law rule requiring personal service, a strict compliance with the statute authorizing such

substituted service is essential to a valid service by that method. Harris *v.* Hardeman, 14 How. 334; Kibbe *v.* Benson, 17 Wall. 624.

But it is hard to see how that rule will be of any avail to litigants if they are precluded from showing that such return is in fact false, thus leaving the parties to the mercy of the officer and the uncertain remedy by action on his official bond. Earle *v.* McVeigh refused to adopt any such unjust ruling.

In that case, upon an allegation that the return of process was false and fraudulent, the defendants were allowed to show it, although the officers return showed on its face compliance with the statute.

Under the strict rule at common law which is adopted in the principal case, an officer's return, as between the parties to a suit and their privies, imports absolute verity and cannot be contradicted in the suit, unless relief against the return is sought upon the ground of fraud, as that a false return was **induced** by one of the parties to the action. Chapline *v.* Robertson, 44 Ark. 202; Waggoner *v.* Green, 40 Ill. App. 648; Johnston Harvester Co. *v.* Bartley, 81 Ind. 406; Gray *v.* Fessenden, 21 Me. 34; Frasier *v.* Williams, 15 Minn. 288; Shanklin *v.* Francis, 59 Mo. App. 178; Smith *v.* Burnham, 58 N. H. 205; Benwood Ironworks *v.* Hutchinson, 101 Pa. St. 359; Carter *v.* Shindel, 7 Pa. Dist. 308; Angell *v.* Bowler, 3 R. I. 7 , Hutton *v.* Campbell, 10 Lea (Tenn.) 172; Rader *v.* Adamson, 37 W. Va. 582, 16 S. E. 808.

In Kentucky, under a statute which provides that except in a direct proceeding against the officer or his sureties an official return cannot be contradicted unless upon an allegation of fraud in the party benefited thereby or mistake on the part of the officer, it is held that upon a judgment by default the defendant cannot move to set aside the judgment upon the ground of the falsity of the return merely for the purpose of defeating the jurisdiction of the court on that ground. Doty *v.* Deposit Bldg., etc., Assoc. (Ky. 1898), 46 S. W. Rep. 219.

But the decided trend of modern decisions is to allow an officer's official return to be impeached by affidavit, plea, motion, or other direct proceeding to vacate it, **any evils or inconvenience which might result from such a course being considered greatly outweighed by the injustice which would often result from an adherence to the strict common-law rule.** Crosby *v.* Farmer, 39 Minn. 305; Union Nat. Bank *v.* Centreville First Nat. Bank, 90 Ill. 56; Toepfer *v.* Lampert (Wis. 1899), 78 N. W. Rep. 779; Campbell Printing Press, etc., Co. *v.* Marder, 50 Neb. 287; Holliday *v.* Brown, 33 Neb. 657; Wilson *v.* Shipman, 34 Neb. 573; Cavanaugh *v.* Smith, 84 Ind. 380; Davis *v.* Dresback, 81 Ill. 393.

"The reason usually given for the rule (at common law) is that it is necessary to secure the rights of parties and give validity and effect to the acts of ministerial officers. In England process could only be served by the sheriff, who was the only ministerial officer known to the courts for that purpose. Moreover, under the common-law practice which obtained there, it was almost impossible for judgment to be rendered against a party without actual personal notice to him. Under such a system the rule might be convenient, and without much danger of working injustice. But under the practice which obtains in this and other states, most of the old safeguards have been removed, and the necessity for modifying the rule and adapting it to the changed condition of the law has been often felt and frequently acted upon, especially in the case of original process by which the court acquires jurisdiction." Crosby *v.* Farmer, 39 Minn. 307.

The injustice of adhering strictly to the old rule in some cases is illustrated in Gary *v.* State, 11 Tex. App. 534, wherein the court said: "To remit the party to his action of damages against the sheriff in a great many instances would be fruitless. The sheriff may be insolvent, and so may be his sureties. Let us suppose a case. A sues B on a claim to which B has a good defense. The sheriff or constable returns that he has served B, when in fact he has not. A gets judgment against B by default; execution issues against him, whereupon he, B, seeks to set aside the judgment upon the ground that he has had no notice of the suit. Must he be told by a court of justice that he cannot and will not be heard, and to pay the money and look to the sheriff or constable? This appears to us to be in violation of that principle which will not permit a citizen's property to be taken without due course of law. No principle can be just which deprives a person of his property without giving him a hearing."

Manner of Raising Objections.—While the strict rule as to the conclusiveness of an officer's return applies to all stages of the proceeding, whether before or after judgment (Rader *v.* Adamson, 37 W. Va. 582, 16 S. E. 808; Stewart *v.* Stewart, 27 W. Va. 167) unless the return was procured or induced by the plaintiff or he can be connected with the deception in some way (Ramsburg *v.* Kline, 96 Va. 465, 31 S. E. 608; Wohlford *v.* Trinkle, 90 Va. 227, 17 S. E. 873) it seems that the better rule is that a false return of service of process may be contradicted upon a motion to set aside a judgment by default. People *v.* Dodge, 104 Cal. 487; Du Bois *v.* Clark (Colo. App. 1898), 55 Pac. Rep. 750; Dasher *v.* Dasher, 47 Ga. 320; Davant *v.* Carlton, 53 Ga. 491; Brown *v.* Brown, 59 Ill. 315; Browning *v.* Gosnell, 91 Iowa 448; Hoitt *v.* Skinner, 99 Iowa 361; Coulbourn *v.* Fleming, 78 Md. 210; Abell *v.* Simon, 49 Md. 324; Zimmerman *v.* Merchant's Nat. Bank, 1 Mich. N. P. 14; Gray *v.* Hays, 41 Minn. 12; Allen *v.* McIntyre, 56 Minn. 351; Burton *v.* Schenck, 40 Minn. 52; Jensen *v.* Crevier, 33 Minn. 372; Crosby *v.* Farmer, 39 Minn. 307, overruling Tullis *v.* Brawley, 3 Minn. 277; Meridian *v.* Trussell, 52 Miss. 711; Meyer *v.* Whitehead, 62 Miss. 389; Van Rensselaer *v.* Chadwick (Supm. Ct. Gen. T.), 7 How. Pr. (N. Y.) 297; Wallis *v.* Lott (Supm. Ct.), 15 How. Pr. (N. Y.) 567; Chadbourn *v.* Johnston, 119 N. Car. 282; Godwin *v.* Monds, 106 N. Car. 448; Brettell *v.* Deffebach, 6 S. Dak. 21.

Summary.—So that the rule in this jurisdiction now is that the return of an officer, no matter how false it may be, cannot be contradicted unless the false return **was procured or induced by the plaintiff,** or he can in some way be connected with the deception. The defendant must be left to pursue what seems his very inadequate remedy of an action for damages against the officer and his sureties.

No doubt, in light of the decisions in Preston *v.* Kindrick, 94 Va. 760, 27 S. E. 588, and Ramsburg *v.* Kline, 96 Va. 465, 31 S. E. 608, the court felt obliged to decide as it did in the principal case, but that does not relieve the injustice of it, and calls loudly for legislative interference.

The court in Talbott *v.* Southern Oil Co., 60 W. Va. 423, 55 S. E. 1009, after citing with approval Ramsburg *v.* Kline, 96 Va. 465, 31 S. E. 608, said that "no doubt the rule is capable of working great hardships," but added that in the case at bar there was "notice in point of fact."

It is hard to conceive of any rule better calculated to work hard

ship and a denial of justice than one which says that the sheriff's statement as to what is your "usual place of abode" is **conclusive and binding on you.** But stop! That is not all. After you have been sold out under execution sued out upon a judgment recovered upon such process, and you are financially ruined, you may then turn around and sue the sheriff. Oh! Justice, what a travesty upon thee!

We cannot grant the premises taken by Mr. Minor in 4 Min. Insts., pt. 1, p. 1042, in which he says, in discussing this rule: "It is no doubt a hardship upon one against whom a judgment is rendered upon such false return, he having had no knowledge of the pendency of the suit, and no opportunity to defend himself; but, on the other hand, it would occasion delays and hindrances in the administration of justice, which would work still greater mischiefs, if it were allowed to impeach the returns of sworn officers and so annul the proceedings founded thereon."

CONTINENTAL CASUALTY CO. v. LINDSAY.

Nov. 17, 1910.

[69 S. E. 244.]

1. Insurance (§ 539*)—Beneficiary—Notice of Death of Insured.—Where the beneficiary of a casualty policy was ignorant of its existence till several months after the insured's death, but immediately gave the insurance company notice of death when the policy was found, the notice was sufficient, although the policy prescribed that it should be forfeited unless the beneficiary should within 15 days after the accident give notice of it, since all the law requires in compliance with the terms of the policy as to notice and proof of loss is that they should be made within a reasonable time after the accident.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 1328; Dec. Dig. § 539.*]

2. Insurance (§ 599*)—Waiver of Notice—Proof of Death.—A letter to a beneficiary of a casualty company in reply to a request for a blank on which to make out proofs of death, stating that the claim is considered altogether invalid, and the policy forfeited, but that the blanks are sent as a courtesy to be used as desired, was a waiver of any strict compliance with the condition in the policy requiring the preliminary notice of death and proof of loss.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1391, 1392; Dec. Dig. § 559.*]

3. Insurance (§ 265*)—Warranty—What Constitutes.—Where, in a written application for insurance, the insured is asked to state the name, relationship and residence of the beneficiary, to which the in-

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.